



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.16005 of 2013

and

M.P.[MD]No.2 of 2013

C.Senthilkumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary for
Health and Family Welfare,
Secretariat, Chennai - 9.

2.The Directorate of
Public Health and Preventive Medicine,
Rep. by its Director,
Teynampet, Chennai.

3.The Directorate of
Medical Education,
Rep. by its Director,
Kilpakkam, Chennai.

4.The Directorate of
Medical and Rural Health Service,
Rep. by its Director,
Teynampet, Chennai.

5.The Directorate of
Medical and Rural Health Service,
Rep. by its Director, (ESI),
Teynampet, Chennai.

6.The Medical Service Recruitment Board,
Rep. by its Secretary,
No.359, Anna Salai,
7th Floor, DMS Buildings,
Teynampet, Chennai - 600 006.

7.The Special Commissioner for
Employment Training,
Guindy, Chennai.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the sixth respondent impugned notification No.15/MRB/2012, dated 04.09.2012, to fill 346 vacancies of the pharmacist in the Medical Department and quash the same as illegal and further direct the first respondent department to follow its earlier G.O.Ms.No.2112/Health, dated 12.09.1972 to provide employment to the petitioners as pharmacist in any one Government Hospital or Health Centre in Tamil Nadu.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondents 1 to 5 & 7 : Mr.C.Ramar
Additional Governmen Pleader
For Respondent No.6 : Mr.T.S.Mohammed Mohideen

O R D E R

The recruitment notification issued by the sixth respondent / Medical Services Recruitment Board, for recruitment to the post of Pharmacist, is under challenge in the present writ petition.

2.The learned Counsel appearing on behalf of the respondent brought to the notice of this Court that the very same issue in relation to the recruitment notification for appointment to the post of Pharmacist was challenged in W.P.[MD]No.13342 of 2013 and this Court dismissed the writ petition on 23.08.2013 and the relevant paragraphs are extracted hereunder:

"4.Though the learned Counsel for the petitioner has submitted that unless and until G.O.Ms.No.2112, Health and Family Welfare Department, dated 12.09.1972, is rescinded or withdrawn, the Government has got no power to issue any Government letters, stated supra, in the matter of giving priority to the stipendiary candidates over non-stipendiary candidates in the appointment to the post of Pharmacist, this Court is not inclined to accept the said contention, for the reason that the decision of the Government to withdraw the above said concession has been taken as early as in the year 1998 itself and also reiterated in G.O.Ms.No.294, Health and Family Welfare Department, dated 12.09.1972. The concession given by the Government before 1998, in the matter of giving preference to the stipendiary candidates, would not clothe the petitioner either a constitutional or statutory right. Preference

<https://hcservices.ecourts.gov.in/hcservices> by the Government in the matter of appointment, can be withdrawn by the Government, at any time. Besides withdrawal of preference given



to the stipendiary candidates over non-stipendiary candidates, for the post of Pharmacist, has been done by way of implementation of order of the Hon'ble Administrative Tribunal, Chennai, in its decision in O.A.No.2604 of 1992, dated 06.04.1993. A decision taken by the Government, pursuant to the order of the Tribunal, cannot be said to have been made arbitrary. Reverting back to the original position giving preference to stipendiary candidates would be contrary to the decision of the Tribunal. That apart, while considering the duties and functions of a candidate, who undergoes the same pattern of study, both in an institution, either with stipend or without the same, there cannot be any indifference. There cannot be any difference in the training, which a candidate undergoes, whether in an institution, which provides stipend or not. When the training remains the same, there is no reason as to why preference should be given to stipendiary candidates. Those who have received stipend do not form a separate class, by themselves to claim any preference, in the matter of appointment to the post of pharmacist and that would be violative of Article 14 of the Constitution of India. Monetary benefit given in the form of stipend cannot be the sole criteria for giving preference. Since 1998, the Government instructions are in force for nearly 15 years. The position cannot be altered now.

5.Lastly, though the learned Counsel for the petitioner, relied on G.O.(2D)No.55, Health and Family Welfare (C1) Department, dated 06.07.2012, in which Government have issued orders relaxing the age limit for SC, ST, BC, MBC and DNC or of Destitute Widows of all castes in the matter of recruitment to the post of Pharmacist and that the same yardstick has to be applied to the case of giving preference also, the said G.O. is inopposite to the facts of this case.

6.For the reasons stated supra, this Court is of the view that there is no manifest illegality in the impugned order warranting interference. Hence, this writ petition is dismissed. The posts of Pharmacists should not be kept vacant in Hospitals, as it would affect the patients. Hence, the respondents are directed to finalise the selection and appointment as expeditiously as possible, if not done, so far. No costs. Consequently, connected miscellaneous petition is also dismissed."



3.This apart, the notification was issued during the year 2012 and the process of selection and appointments were concluded long back. Under these circumstances, the relief as such sought for cannot be considered and further, the very same issue had already been decided on merits by this Court in the judgment cited supra.

4.Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary for Health and Family Welfare,
State of Tamil Nadu, Secretariat, Chennai - 9.
- 2.The Director,
Directorate of Public Health and Preventive Medicine,
Teynampet, Chennai.
- 3.The Director, Directorate of Medical Education,
Kilpakkam, Chennai.
- 4.The Director,
Directorate of Medical and Rural Health Service,
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- 6.The Secretary, Medical Service Recruitment Board,
No.359, Anna Salai, 7th Floor, DMS Buildings,
Teynampet, Chennai - 600 006.
- 7.The Special Commissioner for
Employment Training, Guindy, Chennai.

+1CC TO MR.T.S.MOHAMED MOHIDHEEN, Advocate Sr. No.67999
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 68266

W.P[MD] No.16005 of 2013

11.06.2019

MT (CO)

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IR (24.06.2019) 4P 10C